

SHD Paraphrased Regulations - CalWORKs

080 Personal-Property

081-2

CalWORKs applicants may have countable resources in an amount equal to the federal Food Stamp limit. (W&IC §11155, implemented effective January 1, 1998 by All-County Letter No. 97-66, October 29, 1997; and formally adopted as §42-207.1, effective July 1, 1998)

081-2A

CalWORKs recipients may have countable resources equal to the federal Food Stamp limits. Additionally, they may retain certain specified restricted accounts (not to exceed \$5,000), and certain specified funeral, cremation or interment trusts, insurance, securities, and agreements. (W&IC §§11155, 11155.2, 11158; §42-207.1, as revised effective August 5, 1999)

081-2B

Effective January 1, 1998, state law provided that notwithstanding W&IC §11257, an applicant or recipient for aid under W&IC §11000 to W&IC §12000 could retain, in addition to specified other resources, "countable resources equal to the amount permitted by federal law for qualification for Food Stamps. The county shall determine the value of personal property and automobiles in conformance with methods established under the Food Stamp Program." (W&IC §11155)

Between January 1 and June 30, 1998, the CDSS determined that real and personal property were to be evaluated under FS standards. (All-County Letter (ACL) No. 97-66, October 29, 1997, given regulatory effect under §185 of Assembly Bill No. 1542)

Effective July 1, 1998, the CDSS determined that personal property was to be defined in accord with FS regulations (§42-203.2), and "personal property and vehicles" were determined, included, and excluded using FS regulations at §§63-501.1 and .2. (§§42-211.2, 42-213.2)

Real property regulations, contained in §42-200 et seq., which had supposedly been invalidated under ACL No. 97-66 were restored July 1, 1998. (ACL No. 98-47, July 2, 1998)

081-2C

State regulations effective from July 1, 1998 to August 25, 1999 provided that:

"An applicant or recipient AU may retain countable resources in an amount equal to the amount allowed in the Food Stamp regulations at Manual of Policies and Procedures §63-1101. The value of real and personal property including resources not excluded elsewhere in this chapter, owned by a CalWORKs FG/U family shall not exceed the Food Stamp resource limit. If the limit is exceeded, the family or child is ineligible." (§42-207.1, effective July 1, 1998) [Emphasis added]

An AU is defined as eligible persons living in the home, including the applicant child, any eligible sibling or half-sibling of the applicant child who meets the age requirement, and any eligible parent of the child or the child's eligible sibling. In certain instances the AU may consist of a pregnant woman, the caretaker relative of an SSI/SSP recipient child or of an FC recipient child, or the relative of a child who has been sanctioned by welfare-to-work (formerly GAIN). (§82-820)

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For purposes of §42-200 et seq., the "members of the CalWORKs family are the child and his/her natural or adoptive parents and, when seeking aid for themselves, his/her eligible stepparents and needy caretaker relative, provided that they are not receiving SSI/SSP benefits." (§42-203.8, effective July 1, 1998)

Restricted accounts are exempt under state law and other state regulations, but they were not exempt under §42-200 et seq., nor were they exempt under FS regulations. (W&IC 11155.2; §89-100 et seq.; §63-500 et seq.)

081-2D

Effective August 5, 1999, state regulations provide that:

"An applicant or recipient AU may retain countable resources in an amount equal to the amount allowed in the Food Stamp regulations at Manual of Policies and Procedures §63-1101. The value of real and personal property including resources not excluded elsewhere by regulations, owned by a CalWORKs FG/U family shall not exceed the Food Stamp resource limit. If the limit is exceeded, the family or child is ineligible." (§42-207.1, as amended August 5, 1999)

For purposes of §42-200 et seq., the "members of the CalWORKs family are the child and his/her natural or adoptive parents and, when seeking aid for themselves, his/her eligible stepparents and needy caretaker relative, provided that they are not receiving SSI/SSP benefits." (§42-203.8, effective July 1, 1998)

081-2E

FS regulations at §63-1101.1 allow "retention of \$3000 for an AU which includes at least one member aged 60 or older, and \$2000 for all other AUs." (Handbook §42-207.2)

Effective October 1, 2002, the \$3000 limit also applied to households with a disabled member. (All-County Information Notice No. I-56-02, July 25, 2002, implementing the FS Restoration Act of 2002)

081-2F

State regulations, most recently set forth once again in §42-203.2, provide that personal property is defined in accord with FS regulations. Despite this specific language, the most recent policy declaration from the CDSS is that: "Counties are to use CalWORKs regulations to define income and property." (All-County Letter No. 99-82, October 3, 1999)

081-3

An AU which includes a recipient shall be allowed to retain cash reserves up to \$5,000 in one or more restricted accounts at a financial institution. The funds shall be in addition to the \$2,000 property limit. (§89-504(a), effective 4/1/94, renumbered to §89-115.113 effective July 9, 1995)

081-4

An account can be considered a restricted account only if the caretaker relative signs an agreement with the county setting forth the requirements, restrictions, and penalties specified in §89-504, renumbered to §89-130 effective July 9, 1995. The funds must be

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retained to purchase a home; for postsecondary or vocational training for a child in the AU; or to start up a new business. (§§89-504(b) and (d), renumbered to §§89-130(b) and (d) effective July 9, 1995)

Effective July 1, 1998, the rules governing education or training were amended to provide that restricted accounts, for any educational or training expenses of the account holder or any person who is claimed or could be claimed by the account holder as a dependent for federal tax purposes, could be retained. (§89-130(d))

081-4A ADDED 6/04

The assistance unit shall provide verification to the county of the following information for each account within 30 calendar days from the date of the written agreement. Failure to comply will result in termination of the agreement:

- (1) Names of persons as shown on the restricted account;
- (2) Institution Name and address of the financial institution;
- (3) The account number; and
- (4) The account balance and activity since the date the agreement was signed

(§89-130 (c))

081-4B ADDED 6/04

Funds, which are withdrawn in anticipation of an expense that does not occur or are less than anticipated, shall be redeposited into the restricted account within 30 calendar days from the date of the withdrawal. Failure to timely redeposit the funds shall result in a determination that a nonqualifying withdrawal has occurred, unless good cause exists. Good cause involves circumstances beyond the recipient's control such, illness or medical emergency, failed or delayed completion of a home purchase, lack of transportation, or other extenuating circumstances found by the county. §§ 89-130(g)(4), 89-130(j).

082-4

Prior to January 1, 1998, state regulations provided that the owner of property is the person who has the legal title to, the right to or has possession of the property. Unless there is evidence to prove otherwise, it is presumed for purposes of determining eligibility that the person who "owns" the property has the right to possess, use, control, and dispose of the property. (§42-203.3, invalidated by CDSS, supposedly per W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997) Effective July 1, 1998 the CDSS reinterpreted W&IC §11155, and reinstated this section. (§42-203.3, effective July 1, 1998)

082-6

A transfer of property may be made without writing, unless there is a statute which requires a writing. (Civil Code (Civ. C.) §1052)

A transfer in writing is called a grant, or conveyance or bill of sale. (Civ. C. §1053) A grant takes effect only when it is delivered to the grantee. (Civ. C. §1054) A grant duly

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executed is presumed to have been delivered as of the date on the grant. (Civ. C. §1055)

083-1

Prior to January 1, 1998, state regulations provided that real and personal property must be actually available in order to be considered for AFDC purposes. "Property shall also be considered when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make that sum available for support and maintenance." (§42-201.1, invalidated per CDSS, purportedly by W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997. The CalWORKs real property regulations were restored effective July 1, 1998.)

083-3A

Petitioning for release of trust funds established for individuals in the AU has not been a requirement of the Cal-WORKs program from January 1, 1998 and forward.

Counties which determine that trust funds are inaccessible under §63-501.3 need not take any further action. If the funds are not inaccessible, the county must investigate further to determine whether the funds are exempt.

(All-County Information Notice No. I-92-01, November 2, 2001, referencing §§40-115, 40-157, and 63-501.3)

083-4

Resources whose cash value is not accessible to the household are to be excluded in the evaluation of resource eligibility. (§63-501.3(i), as renumbered effective June 1, 2001)

083-5

Prior to January 1, 1998, and as of July 1, 1998 state regulations provided that there is a presumption that those who share title have equal rights to possession, control and use of the property. This presumption may be refuted by evidence to the contrary. The source and amount of funds invested in the property or the facts around the inheritance, if it was acquired in this way, must be determined in order to arrive at the share which the applicant or recipient and/or his spouse actually owns. (§42-205.2, invalidated per CDSS, supposedly by W&IC §11155, and implemented per CDSS by All-County Letter No. 97-66, October 29, 1997. This CalWORKs regulation was reinstated effective July 1, 1998)

083-6

When the AU claims a resource is unavailable because the AU is unaware of the resource, the federal interpretation for AFDC purposes is that the resource is unavailable as long as no member of the AU is aware of, or had reason to be aware of, the resource. The recipient has the burden of proof. (AFDC Action Transmittal No. ACF-AT-93-2, January 19, 1993)

083-7

"Inaccessible resource" means the resource or vehicle would be exempt from consideration if its equity value is \$1500 or less. (7 Code of Federal Regulations (CFR) §273.8(e)(18), as modified effective January 20, 2001 and to be implemented by June 1,

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2001)

083-8

Property which is essential to the employment or self-employment of a household member is exempt in the FS program. (§63-501.3(f), effective June 1, 2001)

083-9

Prior to June 1, 2001, state regulations provided that resources whose cash value is not accessible to the household are exempt. Such resources include property, other than financial instruments (e.g., stocks, bonds, promissory notes) or vehicles, which if sold or otherwise disposed would be unlikely to produce "any significant amount of funds" or "significant return" for the support of the household.

- (A) "Any significant amount of funds" means funds amounting to one-half or more of the household's resource limit.
- (B) "Significant return" means a return which, after estimated disposition costs and taking into account the ownership interest of the household, amounts to one-half or more of the household's resource limit.

(§63-501.3(h)(5), revised and renumbered effective June 1, 2001)

083-10

Federal FS regulations provide that certain assets are excluded from consideration as resources. Among these exclusions are resources whose sale would not produce a significant return, or the costs of selling the household's interests are relatively great. Specifically, the regulations provide as follows:

"The State agency must develop clear and uniform standards for identifying kinds of resources that, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or the costs of selling the household's interest would be relatively great. The State agency must so identify a resource if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household or the cost of selling the resource would be relatively great. This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments. The determination of whether any part of the value of a vehicle is included as a resource must be made in accordance with the provisions of paragraphs (e)(3) and (f) of this section. The State agency may require verification of the value of a resource to be excluded if the information provided by the household is questionable. The State agencies must use the following definitions in developing these standards:

- "(i) 'Significant return' means any return, after estimating costs of sale or disposition, and taking into account the ownership interest of the household, that the State agency determines are more than \$1,500; and
- "(ii) 'Any significant amount of funds' means funds amounting to more than \$1,500."

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(7 Code of Federal Regulations §273.8(e)(18), as modified effective January 20, 2001, and to be implemented by June 1, 2001)

083-11

Prior to February 21, 2002, state regulations provided that resources which have a cash value that is not accessible to the household shall be excluded. This includes property "other than financial instruments (stocks, bonds, legally binding promissory notes, etc.) or vehicles, which if sold or otherwise disposed would be likely to produce less than \$1500. [Emphasis added] (§63-501.3(i)(5), effective June 1, 2001)

It should be noted that this regulation makes resources (not including vehicles or financial instruments) exempt when the sale of the resources would produce more than \$1500. This is inconsistent with federal regulations, so any eligibility conferred under this section would be state-only FS benefits. (See, e.g., 7 Code of Federal Regulations §273.8(e)(18))

The CDSS has instructed counties to interpret "produce less than \$1500" as "produce more than \$1500" [presumably in light of the difference between federal and state regulations]. (See All-County Information Notice (ACIN) No. I-49-01, June 19, 2001) The CDSS implemented this ACIN policy by amending its regulations. (See §63-501.3(i)(5), as amended effective February 21, 2002)

084-3

Prior to January 1, 1998, state regulations provided that the "net market value" of property is the highest price that property, less encumbrances thereon, will bring in a sale by a willing seller to a willing buyer in the ordinary course of business. (§42-203.7, invalidated by CDSS, supposedly per W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997) This regulation was re-enacted, but applies only to real property in CalWORKs. (§42-203.7, effective July 1, 1998)

084-6 REVISED 2/04

Prior to January 1, 2004, the value of all nonexempt resources, with the exception of vehicles specified in §§63-501.52 and .53 shall be their equity value. The equity value is the fair market value less encumbrances. (§63-501.12 as revised effective June 1, 2001)

The value of all nonexempt resources shall be their equity value. The equity value is the fair market value less encumbrances. (§63-501.12 as revised effective January 1, 2004)

085-1B

It is the position of the CDSS that the only loans which qualify as allowable encumbrances against motor vehicles are those in which the lender is registered with the DMV as the legal owner of the motor vehicle. In addition to providing proof of the DMV registration of the lien holder, the applicant/recipient must provide a copy of the agreement that specifies the terms of the loan, including the fact that the vehicle is collateral for the loan, and the amount and duration of the loan and the frequency of repayment. (All-County Letter No. 94-05, January 24, 1994)

085-3

Federal regulations applicable to the AFDC program define an "automobile" as passenger car or other motor vehicle used to provide transportation of persons or goods.

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In appropriate geographic areas, one alternate primary mode of transportation may be substituted for an automobile. (45 Code of Federal Regulations (CFR) §233.20(a)(3)(ii)(F)(4))

085-4

State law defines a "motor vehicle" as a vehicle which is self-propelled. (Vehicle Code §415)

A "vehicle" is a device by which any person or property may be propelled, moved or drawn upon a highway except human powered devices, or those on stationary rails or tracks. (Vehicle Code §670)

085-5 REVISED 12/04

When computing the fair market value of a licensed vehicle, the county shall not increase the basic blue book value by adding the value of special equipment for the disabled. (§42-215.411; All-County Letter No. 97-38, July 2, 1997 referencing the Americans with Disability Act (ADA) of 1990)

085-6

Licensed vehicles are excluded as resources when jointly owned by a household member and a non-household member not living with the household if the household member does not have possession of, or use of, the vehicle, and is unable to sell it. The household member may be unable to sell the vehicle if the co-owner's signature is necessary and the co-owner refuses to sign. (All-County Information Notice (ACIN) I-46-96, September 5, 1996, interpreting §63-501.21)

Licensed vehicles are excluded as a resource when the household is legally prohibited from selling the vehicle, e.g., when the vehicle is in probate. (ACIN I-46-96, interpreting §63-501.3(h), renumbered to §63-501.3(i)(3), effective June 1, 2001)

085-6A

Federal FS regulations provide for evaluating unlicensed vehicles based solely on their equity value. (7 Code of Federal Regulations (CFR) §273.8(c)(2)).

Unlicensed vehicles are among those resources which are counted as resources only to the extent that they are accessible to the household when the unlicensed vehicle is jointly owned. (7 CFR §273.8(d)) Unlicensed vehicles are included among those resources which are excluded from resource consideration when the unlicensed vehicle is in probate, or when the household is making a good faith effort to sell the vehicle at a reasonable price, and the vehicle has not been sold. (7 CFR §273.8(e)(8))

085-7A REVISED 12/04

The U.S. Circuit Court of Appeals, 9th Circuit, held that vehicles which are not excluded as resources, and whose fair market (or gross) value exceeds the maximum allowable (then \$4500, now \$4650), are not considered inaccessible resources, even when the encumbrances on the vehicle exceed the gross value of the vehicle. Thus plaintiff, whose car had a gross value of \$6625, and a lien of \$8300, was ineligible for FS benefits because the countable value of the vehicle was \$2125 (\$6625-\$4500). This exceeded the \$2000 resource limit. (*Alexander v. Glickman* (1998) 139 F.3d 733)

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Due to changes in federal and state regulations, vehicles which will not produce an estimated return of more than \$1500 are considered inaccessible resources, and thus are excluded from resource consideration. (7 Code of Federal Regulations §273.8(e), effective January 20, 2001 and to be implemented by June 1, 2001; §63-501.525, effective June 1, 2001 and renumbered §42-215.472 effective January 1, 2004)

085-7B REVISED 12/04

The entire value of a licensed vehicle is exempt if it is necessary to transport a physically disabled "household" (HH) member, whether excluded (such as an SSI/SSP recipient) or included, regardless of the purpose of such transportation.

1. Verification of the physical disability shall be required if it is not evident to the eligibility worker.
2. A physician must certify that the individual is temporarily or permanently physically disabled.
3. Only one vehicle per physically disabled "HH" member may be excluded.
4. The vehicle need not have special equipment, nor be used primarily by or for the transportation of the physically disabled "HH" member.

A vehicle shall be considered necessary for the transportation of a physically disabled "HH" member if the vehicle is specially equipped to meet the specific needs of the disabled person, or if the vehicle is of a special type that makes it possible to transport such person.

(§63-501.521(e) renumbered to §42-215.431(e) effective January 1, 2004; United States Dept. of Agriculture, Food and Nutrition Services, FS-6-1-CA, November 9, 1999 interpreting 7 United States Code §2011(g)(2)(c)(ii); All-County Letter (ACL) No. 00-06, January 4, 2000; *Anderson v. Saenz*, dealing with the retroactivity of this change, as set forth in ACL No. 00-31, May 11, 2000)

The vehicle is not excluded on the basis that it is necessary to transport a mentally disabled "household" member. (All-County Information Notice (ACIN) No. I-124-00, December 28, 2000)

085-7C

The following summarizes §§42-215.41 through .46:

To determine the countable resource value of vehicles in CalWORKs, use Steps 1 through 5 as set forth below:

Step One

Determine if any vehicles in the household are excludable as a resource. Vehicles in this category include those that are:

1. Income producing.

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2. Annually producing income consistent with Fair Market Value (FMV), even if used on a seasonal basis.
3. Necessary for long distance travel to employment other than daily commuting, e.g., traveling salesman.
4. Used as a home.
5. Necessary to transport a physically disabled household member.
6. Used as income producing by a self-employed household member who is temporarily unemployed. Exclude for one year after the date of termination of self-employment in farming.
7. Used to carry fuel for heating or water for home use when such fuel or water is the primary source of fuel or water for the household.

If none of the vehicles in the household is excluded from resource consideration, or there are remaining vehicles left to be evaluated, go to Step 2.

Step Two

Exclude any vehicle, licensed or unlicensed, that is an inaccessible resource (a vehicle that will not produce an estimated return of more than \$1,500). Valuation of an inaccessible vehicle is required at application and when a new vehicle is reported. Reevaluation is required only at redetermination.

Step Three

If there are remaining licensed nonexcluded vehicles, determine the number of adult household members (which includes ineligible noncitizens or disqualified family members whose resources are considered available to the AU) and exempt one vehicle each from equity valuation. The FMV must be calculated, and the excess FMV is considered as a countable resource.

If any of the remaining licensed nonexcluded vehicles in the family are used by a teenager under age 18 (which includes an ineligible noncitizen or disqualified household member whose resources are considered available to the household) to drive to work, school, job training, or to look for work, that vehicle is exempt from equity value, but must be evaluated for FMV. The excess FMV is considered a countable resource.

Step Four

For any remaining licensed vehicles, compute the FMV and the equity value. Use the greater of the excess FMV or equity value as the countable resource value.

Step Five

For any remaining unlicensed vehicles (not excluded under Step Two) compute the equity value of each and use the resultant amount as a countable resource value.

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Add the values of the above resource values to arrive at the total vehicle resource value.

(§63-501.525, as revised effective February 21, 2002, revised again and renumbered to §42-215.47 effective January 1, 2004)

085-7F

The federal regulations exempt only the following vehicles from the equity value test outlined in 7 Code of Federal Regulations (CFR) §273.8(f)(1)(iii):

- (i) Vehicles excluded under 7 CFR §273.8(e)(3)(i).
- (ii) One licensed vehicle per adult household member (or an ineligible alien or disqualified household member whose resources are being considered available to household), regardless of the use of the vehicle.
- (iii) Any other vehicle a household member under age 18 (or an ineligible alien or disqualified household member under age 18 whose resources are being considered available to household) drives to commute to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This equity exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to commute to and from employment.

(7 CFR §273.8(f)(2), effective January 20, 2001, and to be implemented by June 1, 2001; these federal regulations were partially followed in state regulations issued effective June 1, 2001, but were not completely consistent, with federal regulations until §63-501.323 was revised effective February 21, 2002)

085-7G REVISED 2/04

Under state regulations, one licensed vehicle per adult family member (or an ineligible noncitizen or disqualified household member whose resources are being considered available to the household) shall be exempt from the equity value test. (§63-501.523(b), effective June 1, 2001, and revised effective February 21, 2002; revised and renumbered to §§42-215.452 and .482 effective January 1, 2004)

085-7H ADDED 2/04

Each licensed vehicle that is not exempted under §63-501.521 (renumbered to §42-215.431 effective January 1, 2004) shall be individually evaluated for fair market value (FMV). The portion of the FMV of any individual vehicle which exceeds the vehicle exclusion limit (\$4650 since October 1996) shall count toward the family's resource level. It does not matter if there are any encumbrances on the vehicle, or how much the family has invested in the vehicle, or whether the vehicle is used to transport family members to and from employment. (§63-501.522 revised and renumbered to §42-215.44 effective January 1, 2004)

Licensed vehicles shall also be evaluated for their equity value, except for excluded vehicles under §63-501.521 (renumbered to §42-215.44 effective January 1, 2004), one licensed vehicle per adult family member (regardless of the vehicle's use), and any licensed vehicle driven by a family member under 18 years of age to go to work, school,

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job training or to look for work. (§63-501.523, as revised effective June 1, 2001 and renumbered to §42-215.45 effective January 1, 2004).

When a licensed vehicle is assigned both an FMV and an equity value, that portion of the FMV which exceeds \$4650 is compared with the equity value. Use only the greater of these two values in determining resource eligibility. (§63-501.524 renumbered to §42-215.46 effective January 1, 2004)

085-8 REVISED 2/04

A household may indicate that for some reason, such as body damage or inoperability, a vehicle is in less than average condition. Any household which claims that the blue book value does not apply to its vehicle shall be given the opportunity to acquire verification of the true value from a reliable source. (§63-501.513 renumbered to §42-215.413)

085-8A ADDED 2/04

When the term "wholesale value" is not used in a particular "blue book", the county should determine the value of a vehicle based on the "trade-in value", not the "retail value". Blue book values, whether on the Internet or in a hardcopy book must be used, rather than Internet sites which give values that are not based on the blue book. Once the county has determined which blue book site or hardcopy it will use, it must use that authority consistently in all CalWORKs evaluations. (§63-501.511 renumbered to §42-215.411 effective January 1, 2004; All-County Information Notice (ACIN) No. I-124-00, December 28, 2000)

085-9 REVISED 2/04

Unlicensed vehicles shall be evaluated for equity value only unless an exemption applies. (§63-501.53, as revised effective June 1, 2001; revised and renumbered to §42-215.42 effective January 1, 2004)

086-7

Prior to January 1, 1998, state regulations provided that the separate and community share of both real and personal property of the stepfather is excluded from AFDC property evaluation. (§§42-213.11e. and 42-213.2p., invalidated by CDSS, supposedly per W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997) The regulation dealing with the real property of the stepfather was reinstated. (§42-213.11e., effective July 1, 1998)

086-8

The value of a wheelchair or other devices required for use by an AFDC applicant or recipient with a disability (as referenced in the Americans with Disabilities Act of 1990) is excluded from property consideration. (All-County Letter No. 97-38, July 2, 1997)

086-9

Household goods, personal effects, one burial plot per household member, the cash value of life insurance policies and pension plans and certain Keogh plans are excluded as resources. (§63-501.3(b))

086-10

During the period from January 1 through June 30, 1998, the CDSS was given authority to implement the provisions of Assembly Bill No. 1542 through All-County Letter (ACL).

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The CDSS evaluated CalWORKs real property under Food Stamp (FS) regulations. (ACL No. 97-66, October 29, 1997)

The following regulation governed CalWORKs and FS real property from January 1 through June 30, 1998:

Property which produces annual income consistent with its fair market value is exempt, even if used only on a seasonal basis. Such property shall include rental and vacation homes. (§63-501.3(d))

086-12

Resources whose cash value is not accessible to the household such as irrevocable trust funds are to be excluded as resources. Funds in a trust or (effective January 1, 1996) funds transferred to a trust, and the income produced by that trust, shall be considered inaccessible to the household if the following conditions are met:

- (A) The trustee administering the funds is either:
 - 1. A court, or an institution, corporation or organization which is not under the direction or ownership of any household member(s); or
 - 2. An individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this section.
- (B) The funds held in irrevocable trust are either:
 - 1. Established from the household's own funds if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust; or
 - 2. Established from nonhousehold funds by a nonhousehold member regardless of how these funds will be used.
- (C) The trust investments do not directly involve or assist any business or corporation under the control, direction or influence of a household member;
- (D) The trust arrangement is not likely to cease during the certification period; and
- (E) No household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period.

(§63-501.3(h)(1), revised May 1, 1996, effective January 1, 1996 per §63-1432; renumbered to §63-501.3(i)(1), effective June 1, 2001)

086-13

During the period from January 1 through June 30, 1998, the CDSS was given authority to implement the provisions of Assembly Bill No. 1542 through All-County Letter (ACL).

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The CDSS evaluated CalWORKs real property under Food Stamp (FS) regulations. (ACL No. 97-66, October 29, 1997)

The following regulation governed CalWORKs and FS real property from January 1 through June 30, 1998:

Resources whose cash value is not accessible to the household are exempt. Such resources include: Security deposits on rental property or utilities; property in probate; and real property which the household is making a good faith effort to sell at a reasonable price but which has not been sold. (§§63-501.3(i)(2) - (4), as renumbered effective June 1, 2001)

086-16

During the period from January 1 through June 30, 1998, the CDSS was given authority to implement the provisions of Assembly Bill No. 1542 through All-County Letter (ACL). The CDSS evaluated CalWORKs real property under Food Stamp (FS) regulations. (ACL No. 97-66, October 29, 1997)

The following regulation governed CalWORKs and FS real property from January 1 through June 30, 1998:

At the time of application, any resources of a woman or women with children who are temporarily residing in a shelter for battered women shall be considered inaccessible if the resources are jointly owned by the resident and member of the former household from which the resident fled and the resident's access to such resources requires the consent of the resident and the member of the former household. (§63-501.3(n) as renumbered effective June 1, 2001)

086-17

During the period from January 1 through June 30, 1998, the CDSS was given authority to implement the provisions of Assembly Bill No. 1542 through All-County Letter (ACL). The CDSS evaluated CalWORKs real property under Food Stamp (FS) regulations. (ACL No. 97-66, October 29, 1997)

The following regulation governed CalWORKs and FS real property from January 1 through June 30, 1998:

The income and resources of nonhousehold members that have not been disqualified, such as Supplemental Security Income recipients, shall not be considered as income or resources to the household. (§63-503.45)

086-18

Resources of a business that are identifiable, such as funds in a checking or savings account, whether maintained exclusively or commingled, shall be excluded from resources to the extent that the funds represent average self-employment income and the funds are necessary to produce that income, for the period of time over which the funds have been averaged. (§63-501.3(f)(2))

086-19

A federal earned income tax credit (EITC) shall be excluded as a resource if received

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either as a lump sum or as payment under the Internal Revenue Code and it shall be excluded as a FS resource for the month of receipt and the following month for the individual and his/her spouse. (§63-501.3(m)(1), as renumbered effective June 1, 2001)

Any federal, state, or local EITC payment received by any household member shall be excluded as a resource for 12 months, provided the household was participating in the FS program at the time the EITC was received, and provided the household participates continuously during that 12-month period. Prior to November 12, 1996, continuous participation included breaks in participation of one month or less due to administrative reasons, such as delayed recertifications or missing or late CA 7s. Effective November 12, 1996, all households (except for migrant and seasonal farmworker household) which had any period of noncertification for administrative reasons are not considered to have continuously participated. (§63-501.3(m)(2), as renumbered effective June 1, 2001)

086-20

The CDSS considers that earned income from any college work-study program including the CalWORKs College Work-study Program "continues to be exempt as income or property." (All-County Letter (ACL) 98-85, October 27, 1998 interpreting §44-111.25)

087-11A

For purposes of computing eligibility and grant amount in CalWORKs, the family includes all members of the AU and those family members living in the home who are referenced in W&IC §11008.14. It is the position of the CDSS that CalWORKs does not count the income of any family member not previously considered under AFDC. In addition, all deeming formulae are eliminated, except for those individuals described in §44-133.5 per All-County Letter (ACL) No. 97-57, which implemented the *Ortega* court order. (ACL No. 97-59, October 14, 1997, as modified by ACL No. 98-17, March 13, 1998) Effective July 1, 1998, "family" is defined differently for property purposes only. (§42-203.8)

087-11B

State law governing recipients of CalWORKs who transfer income or resources was modified effective January 1, 1999, and provides, in pertinent part, as follows:

"However, a gift or any other transfer of assets, including income and resources, by a recipient for less than fair market value shall result in a period of ineligibility for aid under Chapter 2 (commencing with §11200) for the number of months, rounded down to the nearest whole number, that equals the quotient of the difference between the fair market value of the asset and the amount received for the asset divided by the standard of need applicable to the family under §11452. This section shall only apply to transfers of income or resources that would otherwise affect a recipient's eligibility for benefits or the amount of benefits to which he or she would be entitled." (W&IC §11157.5, amended effective January 1, 1999 to add the last sentence quoted above)

087-12A

The receipt of CalWORKs shall not limit nor restrict a recipient's right to give, receive, sell, exchange, or change the form of property or income holdings. A period of ineligibility (POI) shall result when a recipient AU gives away or transfers, for less than Fair Market Value (FMV) nonexcluded income or property that would cause the AU "to

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exceed its eligibility for benefits." [emphasis added] (§42-221.1, as revised effective August 5, 1999)

087-12B

The POI for property transfers shall be computed based on the amount of property that, when added to other countable property, would have exceeded the property limit if the property had been transferred at the FMV. The POI is determined as follows:

- .211 Determine the FMV of the property transferred.
- .212 Add other countable property.
- .213 Subtract the amount of the property limit for the AU.
- .214 Subtract the amount received for the property (if any) from the FMV determined in .211.
- .215 Determine the lesser of .213 and .214.
- .216 Divide the amount determined in .215 by the MBSAC for the AU.
- .217 Round the resulting figure down to the nearer whole number to determine the number of months in the POI.

(§42-221.21, as revised effective August 5, 1999)

087-12C ADDED 8/04

Under QR/PB, when the POI has been determined, cash aid shall be discontinued and the POI shall begin in first month of the next QR Payment Quarter following the transfer and shall continue for the determined number of months of ineligibility. Any aid received by the AU during the ineligible months of the quarter is an overpayment. (§42-221.612)

087-13

Transfer of property rules do not apply to applicant families. (W&IC §11157.5, effective January 1, 1998; §42-221.2, effective July 1, 1998)

087-18

Conversion of property in CalWORKs occurs when a recipient changes an existing resource from one form to another. (§42-203.10, effective July 1, 1998)

087-19 ADDED 2/04

CalWORKs rules regarding transfer of assets for less than fair market value found at MPP §42-221 remain unchanged. Under QR/PB, the period of ineligibility is established at the beginning of the upcoming QR Payment Quarter and continue for the determined number of months. (All-County Letter No. 03-18, April 29, 2003, p.19)

087-19A ADDED 8/04

Under QR/PB, nonrecurring lump sum income/payments shall be treated as property and shall be subject to any application of period of ineligibility rules for a transfer of property for less than fair market value. (§42-221.4)

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088-1 ADDED 2/04

Property eligibility is determined only once per quarter. Property rules under quarterly reporting remain unchanged under QR/PB except that nonrecurring lump sum income is now considered property in the month received in CalWORKs just as in food stamps. (All-County Letter No. 03-18, April 29, 2003, p.16)

088-1A ADDED 8/04

Under QR/PB, nonrecurring lump sum payments which are not recurring regular income and usually nonrecurring in regard to amount and/or source, shall be treated as property in the month of receipt and any subsequent months. (§42-209.2, 44-101(c))

088-2 ADDED 2/04

The county will use information reported on the QR 7 to determine continuing property eligibility for the entire upcoming QR Payment Quarter. No other property eligibility assessment may be made for that QR Payment Quarter.

If the assistance unit/household acquires property in excess of the property limit in the third month of the Payment Quarter (i.e., the Submit Month) or in the first month of the next Payment Quarter, the assistance unit/household remains eligible for the entire QR Payment Quarter. (All-County Letter No. 03-18, April 29, 2003, p.16-17)

088-3 ADDED 2/04

In the QR/PB system, the only time an assistance unit /household is required to report property is on the QR 7. Property related overpayments/overissuances will be determined based on information that should have been reported on the QR 7. An assistance unit/household is only required to report property when property exceeds the limit in the second month of the quarter (i.e., the QR Data Month).

If a recipient owned property that exceeded the resource limit in the second month of the quarter and failed to report it on the QR 7, or if the county failed to act correctly on a report of property that exceeds the limit, the county shall determine the benefits the assistance unit/household should have received. (All-County Letter No. 03-18, April 29, 2003, p.72)